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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Applications of:)	MM Docket No. <u>94-71</u> ✓
)	
SANTA MONICA COMMUNITY COLLEGE)	File No. BPED-920305ME
DISTRICT)	
(hereafter "SMCCD"))	
)	
For Construction Permit for a)	
New Noncommercial FM Station on)	
Channel 204B in Mojave, California)	
)	
LIVING WAY MINISTRIES)	File No. BPED-920511MC
(hereafter "Living Way"))	
)	
For Construction Permit for a)	
New Noncommercial FM Station on)	
Channel 205A in Lancaster,)	
California)	
)	

HEARING DESIGNATION ORDER

Adopted: June 24, 1994; Released: June 27, 1994

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications, one for a new noncommercial educational ("NCE-FM") FM station serving Mojave, California, and one for a new NCE-FM station serving Lancaster, California.

2. SMCCD. The SMCCD application appears to be in violation of the 47 C.F.R. § 73.3513(a)(4) requirement that a member of the governing board of an institution sign the application and associated amendments. The members of the SMCCD governing board, who are authorized to sign any filings, are listed in Section II, Exh. 2 of the application. This list does not include Thomas J. Donner, Deputy Superintendent, the signatory of the SMCCD application and amendments. Therefore, SMCCD must amend Section VII, the certification page, of the application and must ratify its previous amendments by including a signature which complies with the provisions of Section 73.3513.

3. Share-time Arrangement. Neither of the applicants has indicated that an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. Granfalloon Denver Educational Broadcasting, Inc., 43 Fed. Reg. 49,560 (October 24, 1978). In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing, or at anytime during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement among themselves.

4. Section 307(b) and Contingent Comparative Issues. The respective

proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to 47 U.S.C. § 307(b), which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

5. Air Hazard Issue. Attempts to obtain FAA clearance through the Commission's Support Services Branch as to whether the antennas proposed by SMCCD and Living Way would constitute a hazard to air navigation have been unsuccessful. Accordingly, an issue will be specified with respect to SMCCD and Living Way, and the FAA made a party to the proceeding.

6. Comparative Coverage. Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in New York University, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

7. Late-Filed Amendments. SMCCD filed amendments to its application on March 5, 1993 and June 17, 1994, after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

8. Conclusion. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest, and, if so, the terms and conditions thereof; and (c) in light of 47 U.S.C. Section 307(b), which of the proposals would better provide a fair, efficient and equitable distribution of radio service.
2. To determine in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.
3. To determine whether there is a reasonable possibility that the tower heights and locations proposed by SMCCD and Living Way would constitute a hazard to air navigation.
4. To determine, in light of the evidence adduced pursuant to the

specified issues, which of the applications should be granted, if either.

10. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

11. IT IS FURTHER ORDERED, That SMCCD shall within 30 days of the release date hereof file the amendment and ratification called for in paragraph 2, supra, and provide a copy to the presiding Administrative Law Judge.

12. IT IS FURTHER ORDERED, That the amendments filed on March 5, 1993 and June 17, 1994 by SMCCD ARE ACCEPTED to the extent indicated herein.

13. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Linda B. Blair, Assistant Chief
Audio Services Division
Mass Media Bureau